

No. _____

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

VOICES FOR INTERNATIONAL BUSINESS AND EDUCATION, INC.
d/b/a INTERNATIONAL HIGH SCHOOL OF NEW ORLEANS,

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition for Review of Final Order of the National Labor Relations Board

Under 29 U.S.C. § 160(f) and Fed. R. App. P. 15, Voices for International Business and Education, Inc. d/b/a International High School of New Orleans hereby petitions the Court for review of the Final Decision and Order of the National Labor Relations Board, entered on May 5, 2017, granting the General Counsel's Motion for Summary Judgment for refusing to recognize and bargain with the United Teachers of New Orleans, Local 527, LFT, AFT. Petitioner Voices for International Business and Education, Inc. d/b/a International High School of New Orleans is aggrieved by the Board's Final Decision and Order and

prays that it be set aside by this Court. A copy of the Final Decision and Order is attached.

Respectfully submitted,

s/ Aaron G. McLeod

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Certificate of Service

I hereby certify on May 5, 2017, under Federal Rule of Appellate Procedure 15(c) that I will serve a copy of this document on each party admitted to participate in the NLRB proceedings, listed below. I further certify that I have furnished the Clerk with sufficient copies to serve the Respondent per Rule 15(c)(3).

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s/ Aaron G. McLeod
Aaron G. McLeod
Counsel for Petitioner

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Voices for International Business and Education, Inc.
d/b/a International High School of New Orleans
and United Teachers of New Orleans, Local 527,
LFT, AFT. Case 15–CA–182627**

May 5, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on August 23, 2016, by United Teachers of New Orleans, Local 527, LFT, AFT (the Union), the General Counsel issued the complaint on September 2, 2016, alleging that Voices for International Business and Education, Inc. d/b/a International High School of New Orleans (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain with it following the Union’s certification in Case 15–RC–175505. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On February 14, 2017, the General Counsel filed a Motion for Summary Judgment. On February 21, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer to the complaint, the Respondent denies that it has failed and refused to recognize and bargain with the Union, and maintains as an affirmative defense that the complaint fails to state a claim upon which relief can be granted because the Respondent is not an employer within the meaning of the Act.¹

¹ The Respondent’s answer denies the complaint allegation that it is an employer within the meaning of the Act, and on that basis denies that the unit is appropriate, that the Union is the exclusive collective-bargaining representative of the unit employees; and that it has refused to bargain with the Union. However, the issues regarding the employer’s status as an employer, the appropriateness of the unit, and the Union’s status as the exclusive collective-bargaining representative of the unit employees were litigated and resolved in the representation

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a non-profit corporation with an office and place of business in New Orleans, Louisiana, and has been engaged in operating a public charter school. In conducting its operations during the 12-month period ending May 3, 2016, a representative period, the Respondent derived gross revenues in excess of \$1 million.

In conducting its operations annually, the Respondent purchased and received at its New Orleans, Louisiana facility goods valued in excess of \$50,000 directly from points outside the State of Louisiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and

proceeding. In addition, the General Counsel has attached to its motion as Exh. H a copy of an email sent from the Respondent’s attorney to counsel for the General Counsel, which states in relevant part: “This is a test of certification case. The undersigned has conveyed to the Union’s attorney Respondent’s refusal to bargain in response to the Union’s request for bargaining. Respondent is refusing to bargain in order to challenge the certification of election [sic] issued in 15–RC–175505 on the grounds that the Board lacks jurisdiction over Respondent under Section 2(2) of the Act.” The Respondent does not refute the authenticity of this document. Therefore, we find that the Respondent’s denials of these complaint allegations do not raise any genuine issue of material fact warranting a hearing.

² The Respondent’s request that the complaint be dismissed is therefore denied.

Chairman Miscimarra would have granted review in the underlying representation proceeding and would have dismissed the petition on the ground that the Respondent is a political subdivision of the state of Louisiana exempt from the Board’s jurisdiction. He also stated that in any event, he believes that the Board should decline jurisdiction over the Respondent, and other charter schools as a class, pursuant to Sec. 14(c)(1) of the Act. While he remains of that view, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

(7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on May 27, 2016, the Union was certified on June 7, 2016, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time professional employees, including teachers, full-time substitute teachers, teacher-department chairs, special education coordinator/department chair, social workers, nurses, counselors, remediation specialists, ESL coordinator, and behavior interventionists, paraprofessionals, in-school suspension aides, child-specific aides, and teacher aides employed at the Employer's New Orleans campus; Excluded: head of school, principal, chief of staff, administrative assistant, administrative consultant, dean of students, director of student support, IB coordinator, marketing and recruiting manager, data manager, security guards, academic instructional coach, all other administrative employees, all other managerial employees, all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

By letter dated June 29, 2016, the Union requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since June 29, 2016, the Respondent has failed and refused to meet and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since June 29, 2016, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an

understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Voices for International Business and Education, Inc. d/b/a International High School of New Orleans, New Orleans, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Teachers of New Orleans, Local 527, LFT, AFT as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time professional employees, including teachers, full-time substitute teachers, teacher-department chairs, special education coordinator/department chair, social workers, nurses, counselors, remediation specialists, ESL coordinator, and behavior interventionists, paraprofessionals, in-school suspension aides, child-specific aides, and teacher aides employed at the Employer's New Orleans campus; Excluded: head of school, principal, chief of staff, administrative assistant, administrative consultant, dean of students, director of student support, IB coordinator, marketing and recruiting manager, data manager, security guards, academic instructional coach, all other administrative employees, all other managerial employees, all other employees, guards and supervisors as defined in the Act.

VOICES FOR INTERNATIONAL BUSINESS AND EDUCATION, INC. D/B/A INTERNATIONAL HIGH SCHOOL
OF NEW ORLEANS

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(b) Within 14 days after service by the Region, post at its facility in New Orleans, Louisiana, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 29, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 5, 2017

Philip A. Miscimarra, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with United Teachers of New Orleans, Local 527, LFT, AFT as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

Included: All full-time and regular part-time professional employees, including teachers, full-time substitute teachers, teacher-department chairs, special education coordinator/department chair, social workers, nurses, counselors, remediation specialists, ESL coordinator, and behavior interventionists, paraprofessionals, in-school suspension aides, child-specific aides, and teacher aides employed at our New Orleans campus; Excluded: head of school, principal, chief of staff, administrative assistant, administrative consultant, dean of students, director of student support, IB coordinator, marketing and recruiting manager, data manager, security guards, academic instructional coach, all other administrative employees, all other managerial employees, all other employees, guards and supervisors as defined in the Act.

VOICES FOR INTERNATIONAL BUSINESS
AND EDUCATION, INC. D/B/A
INTERNATIONAL HIGH SCHOOL OF NEW
ORLEANS

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

The Board's decision can be found at www.nlr.gov/case/15-CA-182627 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

